

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

LONNIE MELVIN MURRAY and  
JOHNNIE CHARLES MURRAY,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

FEB 2 1969

No. 22340

PETITION FOR REHEARING

FILED

FEB 20 1969

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Petitioner, JOHNNIE CHARLES MURRAY, whose appeal was heard by this Court, and on which a decision was rendered and entered on November 7, 1968, respectfully requests a rehearing, and that said decision be reversed on the following grounds.

1. From a reading of the decision of this Court, it is not apparent whether this Court considered the applicability of the rule in Keck vs. United States (1899) 172 U.S. 434, 19 S.Ct. 254, 43 L.Ed. 505. The Keck case is discussed in detail on pages 7, 8, 9 and 10 of Appellants' Opening Brief and on pages 5, 6 and 7 of Appellants' Reply Brief. Appellee discusses the Keck case, supra, at pages 15 and 16 of its brief. The petitioner respectfully requests rehearing so



that this Court may direct its attention to petitioner's argument on the applicability of the rule in the Keck case, supra, as to this petitioner.

2. This decision may raise a distinction between a "strip search" in which contraband is located early in the stripping process and a "strip search" in which the contraband is not located until the final invasion of a body cavity. Petitioner respectfully submits that he was not told to simply "remove his coat" but was told to "undress." Both petitioner (RT 67) and his brother (RT 104) were told to undress. Petitioner submits that after being told to undress, petitioner's subsequent taking off of his clothing for examination by the customs officer constituted a "strip search." Petitioner seeks rehearing so that this Court may reconsider the adequacy of the record on this important constitutional question, and may consider remanding this case for further proceedings to determine whether petitioner was ordered to strip and whether the rule in Henderson vs. United States (9 Cir. 1967) 390 F.2d 805 shall apply.

Petitioner, JOHNNIE CHARLES MURRAY, respectfully submits that this petition be granted, and that this cause be reset for argument thereon.

Dated: November 20, 1968.

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JOSEPH A. FILIPPELLI  
Attorney for Petitioner



CERTIFICATE

I, JOSEPH A. FILIPPELLI, certify that in my judgment this Petition for Rehearing is well founded and it is not interposed for delay.

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JOSEPH A. FILIPPELLI





CERTIFICATE OF SERVICE BY MAIL

UNITED STATES

COURT OF APPEALS

FOR THE NINTH CIRCUIT

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JOSEPH A. FILIPPELLI hereby certifies that he is an attorney admitted as an attorney and counselor of the United States Court of Appeals for the Ninth Circuit, and is a person of such age and discretion to be competent to serve papers.

That on November 20, 1968, he served a copy of the attached petitioner's Petition for Rehearing by placing said copy in an envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address and by depositing said envelope and contents in the United States mail at the Main Post Office Building, Seventh and Mission Streets, San Francisco, California.

Mobley Milam, Esq.  
Assistant United States Attorney  
325 West "F" Street  
San Diego, California

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JOSEPH A. FILIPPELLI

Subscribed and sworn to  
before me this 20th day  
of November, 1968.

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NOTARY PUBLIC  
State of California

